UNITED STATES OF AMERICA
UNITED STATES COAST GUARD VS.
MERCHANT MARINER'S DOCUMENT No. 552-33-0697
Issued to: Robert L. BARNHART, II

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2430

Robert L. BARNHART, II

This appeal has been taken in accordance with 46 U.S.C. 7702 and 46 CFR 5.30-1.

By order dated 12 June 1985, an Administrative Law Judge of the United States Coast Guard at Long Beach, California, revoked Appellant's merchant mariner's document upon finding proved the charge of misconduct. The specification supporting the charge alleges that Appellant, while serving as pumpman on board the SS LION OF CALIFORNIA, under authority of the captioned document, did on or about 19 April 1985 at Berth 118, Los Angeles Harbor, wrongfully have in his possession certain narcotics, to wit: marijuana.

The hearing was held at Long Beach, California, on 10 and 24 May 1985.

Appellant appeared at the hearing without counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence three exhibits and the testimony of one witness.

In defense, Appellant testified in his own behalf.

After the hearing the Administrative Law Judge rendered a decision in which he concluded that the charge and specification had been proved, and entered a written order revoking al documents issued to Appellant.

The complete Decision and Order was served on 19 June 1985. Appeal was timely filed on 19 June 1985, and perfected on 21 November 1985.

FINDINGS OF FACT

At all relevant times on 19 April 1985, Appellant was serving as Pumpman aboard the SS LION OF CALIFORNIA under the authority of his Merchant Mariner's Document. The vessel was at Berth 118 in

Los Angeles Harbor. During the early morning hours on 19 April 1985, a federal task force including officers of the Coast Guard, U.S. Customs Service and the Los Angeles Police Department boarded the CALIFORNIA to search for contraband. The crew was assembled in

the mess hall. The master of the CALIFORNIA had previously furnished the task force with the names of several crewmembers, including Appellant, as individuals he suspected of possessing drugs. Appellant was selected as one of the crewmembers whose quarters would be searched, and Appellant, together with members of the task force, proceeded to his room. Appellant was the sole occupant of these quarters.

During the search, a Customs Service dog "alerted" to a substance on the desk, where a police detective found a metal pipe. The detective opened the desk drawer and found a plastic bag containing material which appeared to him to be marijuana. The pipe and the plastic bag were confiscated and field tested. Both items were found to contain marijuana. Later laboratory testing showed that the metal pipe contained .2 grams of marijuana, and that the plastic bag contained 8.5 grams of marijuana.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant denies that he possessed the marijuana, and contends that dismissal of criminal charges involving the same incident by the Municipal Court of Los Angeles mandates dismissal of the charge here.

Appearance: Appellant, pro se.

OPINION

I

Initially, Appellant denies possession of the marijuana. However,despite the same contention by Appellant at the hearing, the Administrative Law Judge found otherwise.

At the hearing, the police officer testified concerning the discovery of the marijuana in Appellant's room. Appellant testified that the marijuana was not in his possession and that anybody on board the vessel could have put the marijuana where it was found. (T-28). The Administrative Law Judge rejected Appellant's testimony. (Decision and Order at 5).

Whether or not Appellant possessed the marijuana is a question of fact to be resolved by the Administrative Law Judge. Since his

determination is not inherently unreasonable or arbitrary, it will not be overturned. See Appeal Decisions 2391 (STUMES), 2365 (EASTMAN), 2367 (SPENCER), 2356 (FOSTER), 2302 (FRARRIER) and 2290 (DUGGINS).

I find no reversible error in the Administrative Law Judge's determination of the facts, and I will not disturb his findings.

II

Appellant next contends that the charge and specification should be dismissed because criminal charges brought as the result of the same incident were dismissed by the Municipal Court of Los Angeles. In support of this argument, he has produced a document which he contends shows that the criminal charges were dismissed on motion of the prosecution due to insufficient evidence.

The authenticity of this document, dated subsequent to the hearing, has not been established. However, assuming arguendo that it is what Appellant purports it to be, and assuming that the document is admissible and has some relevance to the question of whether Appellant committed the offense charged, it is of little or no legal significance.

A discretionary decision not to prosecute criminally constitutes no bar to the initiation of suspension and revocation proceedings. The doctrine of res judicata, under which a matter once judicially decided is not subject to additional litigation, does not bar suspension and revocation action, since the Municipal Court did not reach a final judgment on the possession question. See Appeal Decision 2254 (YOUNG). Further, since these proceedings are remedial, and apply a less stringent standard of evidence (substantial evidence) than a state criminal court (proof beyond a reasonable doubt), even an acquittal in a criminal proceeding would not bar further suspension and revocation action. See YOUNG, supra. See also Appeal Decision 1931 (POLLARD).

Additionally, the document submitted by Appellant has little or no probative value. The opinion of the prosecutor as to the strength of the criminal case, i.e. the likelihood of obtaining a conviction, is of no consequence in deciding whether there is substantial evidence from which a determination may be made in an administrative proceeding that Appellant committed the offense charged.

CONCLUSION

Having reviewed the entire record and considered Appellant's argument, I find that Appellant has not established sufficient

cause to disturb the findings and conclusions of the Administrative Law Judge. The hearing was conducted in accordance with the requirements of applicable regulations.

ORDER

The decision of the Administrative Law Judge dated at Long Beach, California, on 12 June 1985 is AFFIRMED.

J. C. IRWIN
Vice Admiral, U. S. Coast Guard
ACTING COMMANDANT

Signed at Washington, D.C. this 4 day of AUGUST, 1986.